

(b) in the second sentence by inserting "for the purposes of conducting any hearing" after "summoned".

SEC. 18. PERMIT SANCTIONS.

(a) EFFECT OF PERMIT TRANSFER.- Section 308(g)(3) (16 U.S.C. § 1858(g)(3)) is amended-

(1) by inserting "a permit, or any interest in a permit," after "a vessel," in the first sentence;

(2) by inserting "permit, or interest in a permit," after "a vessel," in the second sentence; and

(3) by inserting ", permit, or interest" after "the vessel" in the second sentence.

(b) PERMIT REINSTATEMENT UPON PAYMENT OF SETTLEMENT AMOUNT.- Section 308(g)(4) (16 U.S.C. § 1858(g)(4)) is amended-

(1) by striking "civil penalty or criminal fine," and inserting "civil penalty, criminal fine, or any amount in settlement of a civil forfeiture," and

(2) by striking "penalty or fine" and inserting "penalty, fine, or settlement amount".

SEC. 19. FORFEITURE OF CATCH FOR CITATION.- Section 310(a) (16 U.S.C. § 1860(a)) is amended-

(a) by striking "(other than" through "sufficient sanction)"; and

(b) by inserting ", except that no fishing vessel shall be subject to forfeiture as a result of any act for which issuance of a citation under section 311(c) is sufficient sanction" before the period at the end of the first sentence.

SEC. 20. FISHING CAPACITY REDUCTION PROGRAM – Section 312(b)-(e) is amended-

(a) by striking section 312(b)-(e), and

(b) inserting the following: "(b) FISHING CAPACITY REDUCTION PROGRAM.-

“(1) The Secretary may conduct a fishing capacity reduction program (referred to in this section as the "program") in a fishery under the authority of the Secretary, a Council or a State if the Secretary determines that the program-

“(A) is necessary to improve either the fishery's conservation and management or the fishery's economic efficiency, stability, safety, wellbeing, organizational effectiveness, or subsequent rationalization;

“(B) is consistent with the Federal or State fishery management plan or program in effect for such fishery, as appropriate, and that the fishery management plan-

“(i) will prevent replacement of the fishing capacity that the program removes through a moratorium on new entrants, practicable restrictions on vessel upgrades, and measures that take into account any latent fishing capacity in the fishery's fleet; and

“(ii) establishes a specified or target total allowable catch or other measures that trigger fishery closure or adjustments; and

“(C) is cost-effective and, in the instance of a program involving an industry-fee system, prospectively capable of repaying any debt obligation incurred under section 1111 of title XI of the Merchant Marine Act, 1936.

“(2) The objective of the program shall be to obtain the maximum sustained reduction in

fishing capacity at the least cost and in a minimum period of time. To achieve that objective, the Secretary is authorized to pay-

“(A) the owner of a fishing vessel, if the permit authorizing the participation of the vessel in the fishery is surrendered for permanent revocation and the vessel owner and permit holder relinquish any claim associated with the vessel or permit that could qualify such owner or holder for any present or future limited access system permit in the fishery for which the program is established and such vessel is-

“(i) scrapped, or

“(ii) subjected to title restrictions (including, but not limited to, loss of the vessel's fisheries endorsement) by the Secretary of the department in which the Coast Guard is operating, that permanently prohibit and effectively prevent its use in domestic fishing, or

“(B) the holder of a permit authorizing participation in the fishery, if such permit is surrendered for permanent revocation, and such holder relinquishes any claim associated with the permit and vessel used to harvest fishery resources under the permit that could qualify such holder for any present or future limited access system permit in the fishery for which the program is established.

“(3) Participation in the program shall be voluntary, but the Secretary shall ensure compliance by all who do participate.

“(4) The harvester proponents of each program and the Secretary may consult, as appropriate, with interested parties during the development and implementation of any

program under this section.

“(c) PROGRAM FUNDING.

“(1) The program may be funded by any combination of amounts-

“(A) available under clause (iv) of section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. § 713c-3(b)(1)(A); the Saltonstall-Kennedy Act);

“(B) appropriated for the purposes of this section;

“(C) provided under an industry fee system established under subsection (d) and in accordance with section 1111 of title XI of the Merchant Marine Act, 1936; or

“(D) provided by any State or other public or private or non-profit organization.

“(2) All funds for the program, including any fees established under subsection (d), shall be paid into the fishing capacity reduction funds established under section 1111 of title XI of the Merchant Marine Act, 1936.

“(d) INDUSTRY FEE SYSTEM.

“(1) (A) If an industry fee system is necessary to fund the program, the Secretary may conduct a referendum on such system. Prior to the referendum, the Secretary shall-

“(i) identify, to the extent, practicable, and notify all permit or vessel owners who would be affected by the program; and

“(ii) make available to such owners information about the industry fee system describing the schedule, procedures, and eligibility requirements for the referendum; the proposed program; and the amount

and duration and any other terms and conditions of the proposed fee system.

“(B) The industry fee system shall be approved if the referendum votes which are cast in favor of the proposed system constitute a two-thirds majority of the participants voting.

“(2) Notwithstanding section 304(d) and consistent with an approved industry fee system, the Secretary is authorized to establish such a system to fund the program and repay debt obligations incurred pursuant to section 1111 of title XI of the Merchant Marine Act,

1936. The fees for a program established under this section shall-

“(A) be determined by the Secretary and adjusted from time to time as the Secretary considers necessary to ensure the availability of sufficient funds to repay such debt obligations;

“(B) not exceed 5 percent of the ex-vessel value of all fish involved in the program harvested from the fishery for which the program is established;

“(C) be deducted by the first ex-vessel purchaser from the proceeds otherwise payable to the seller and accounted for and forwarded by such fish purchasers to the Secretary in such a manner as the Secretary may establish unless the Secretary determines that such fees should be collected from the seller; and

“(D) be in effect only until such time as the debt obligation has been fully paid.

“(e) PROGRAM IMPLEMENTATION.

“(1) The Secretary shall propose and adopt framework regulations applicable to

implementing all programs under this section.

“(2) The Secretary shall implement each program under this section by proposing and adopting regulations that shall, together with the framework regulations, establish each program and control its implementation.

“(3) The harvester proponents of each program shall, before the Secretary proposes such regulation, provide to the Secretary a proposed implementation plan that, among other matters:

“(A) proposes the types and numbers of vessels or permits that are eligible to participate in the program and the manner in which the program shall proceed, taking into account:

“(i) the requirements of this section;

“(ii) the requirements of the framework regulations;

“(iii) the characteristics of the fishery;

“(iv) the requirements of the applicable fishery management plan and any amendment that such plan may require to support the proposed program;

“(v) the general needs and desires of harvesters in the fishery;

“(vi) the need to minimize program costs; and

“(vii) other matters, including, but not limited to, the manner in which such proponents propose to fund the program to ensure its cost effectiveness, as well as any relevant factors demonstrating the potential for, or necessary to obtain, the support and general cooperation of a substantial number of affected harvesters in the fishery (or portion of the fishery) for which the program is intended; and

“(B) suggests proposed procedures for program participation (such as

submission of owner bids under an auction system or fair market-value assessment), including any terms and condition for participation, that the harvester proponents deem to be reasonably necessary to meet the program's proposed objectives.

“(4) The Secretary shall contract with each person participating in a program, and each such contract shall, in addition to including such other matters as the Secretary deems necessary and appropriate to effectively implement each program (including, but not limited to, penalties for contract non-performance) be consistent with the framework and implementing regulations and all other applicable law.

“(5) Each program not involving fair market assessment shall involve a reduction auction that scores the reduction price of each bid offer by the data relevant to each bidder under an appropriate fisheries productivity factor. If the Secretary accepts bids, the Secretary shall accept each bid in the rank order of its bid score, with each bid whose reduction price is the lowest percentage of the productivity factor being first accepted over each bid whose reduction factor is the next lowest percentage of the productivity factor.

“(6) Each program shall proceed by the Secretary issuing invitations to bid setting out the terms and conditions for participation consistent with the framework and implementing regulations. Each bid that the Secretary receives in response to the invitation to bid shall constitute an irrevocable offer from the bidder.”

SEC. 21. COLLECTION OF INFORMATION.

(a) PROGRAMS INITIATED BY SECRETARY.- Section 402(a) (16 U.S.C. § 1881a(a)) is

amended-

(1) by striking "COUNCIL REQUESTS." and inserting "COLLECTION PROGRAMS.";

(2) by redesignating the existing text as paragraph (1);

(3) in paragraph (1), as so redesignated -

(A) by inserting "(1) COUNCIL REQUESTS." before "If a Council"; and

(B) by striking "subsection" in the last sentence and inserting "paragraph";

and

(4) by inserting after redesignated paragraph (1) a new paragraph to read as follows: "(2) SECRETARIAL INITIATION. If the Secretary determines that additional information is necessary for developing, implementing, revising, or monitoring a fishery management plan, or for determining whether a fishery is in need of management, the Secretary may, by regulation, implement an information collection or observer program requiring submission of such additional information for the fishery.".

(b) COLLECTION OF CERTAIN INFORMATION REGARDING BUSINESS

OPERATIONS.- Section 402(a) (16 U.S.C. § 1881a(a)) is amended by striking "(other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations)" each place it appears in paragraph (1), as so redesignated by subsection (a).

SEC. 22. ACCESS TO CERTAIN INFORMATION.

(a) CERTAIN STATE EMPLOYEES.- Section 402(b)(1) (16 U.S.C. § 1881a(b)(1)) is amended-

(1) by redesignating subparagraphs (B) through (F) as subparagraphs (C) through (G), respectively; and

(2) by inserting after subparagraph (A) a new subparagraph to read as follows: "(B) to State employees who are responsible for fishery management plan monitoring, if the States employing those employees have entered into a fishery enforcement agreement with the Secretary and the agreement is in effect;".

(b) DETERMINATIONS UNDER LIMITED ACCESS SYSTEM.- Section 402(b)(1) (16 U.S.C. § 1881a(b)(1)) is amended-

(1) in subparagraph (F), as so redesignated by subsection (a) of this section, by striking "or" at the end;

(2) in subparagraph (G), as so redesignated by subsection (a), by striking the period at the end and inserting "; or"; and

(3) by adding at the end a new subparagraph to read as follows: "(H) when such information is required by the Secretary for any determination under a limited access system.".

SEC. 23. FUNDING FOR FISHERY OBSERVER PROGRAMS.

(a) OBSERVER PROGRAM FUNDING.

(1) Section 403 (16 U.S.C. § 1881(b)) is amended by adding at the end new subsections to read as follows: "(d) OBSERVER PROGRAM FUNDING MECHANISM. (1) A funding mechanism may be established under this subsection-

"(A) upon recommendation of any Council and approval by the Secretary, to cover the cost of an observer program established by that Council under section 303(b)(8), including an observer program for the North Pacific halibut fishery;

and

"(B) by the Secretary, to cover the cost of an observer program to monitor any fishery managed under this Act or any other Act administered by the Secretary, including the Northern Pacific halibut fishery.

"(2)(A) Each Council, and the Secretary, may exercise broad discretion in developing a funding mechanism under this subsection, which may include, but is not limited to, a system of fees, payments collected from the establishment of an Individual Fishing Quota system, or any other cost recovery mechanism to pay for the cost of-

(i) stationing observers on board fishing vessels and United States fish processors, and

(ii) the actual cost of inputting collected data, less any amount received for such purpose from another source or from an existing surplus in the Fishery Observer Fund established in subsection(e).

"(B) The moneys collected under a funding mechanism established under this subsection for an observer program shall be-

"(i) deposited into the Fishery Observer Fund established by subsection (e); and

"(ii) used only for that observer program, except where an observer program directs that all or part of those moneys shall be used for support of national or multi-region observer program activities.

"(3) Notwithstanding subsection 303(b)(8), and except where provided under subsection (d)(4), no observer program may be funded through direct contractual agreements made

directly between the owner or operator of a fishing vessel or United States fish processor and any non-governmental observer provider company.

"(4) Fishery management plans and regulations under this Act that allow for direct contractual agreements between the owner or operator of a fishing vessel or United States fish processor and any non-governmental observer provider company shall be evaluated by the appropriate Council with respect to conflict-of-interest concerns that could potentially undermine the quality of data collected. Within three years of the date of enactment of the Fishery Conservation and Management Amendments of 2003, the appropriate Council shall prepare and submit to the Secretary a fishery management plan amendment or proposed regulations that will remove conflict-of-interest concerns. If NMFS approves the Council recommendation, the measures must be implemented within two years of the approval. If the appropriate Council fails to submit to the Secretary a fishery management plan amendment or proposed regulations to remove conflict of interest concerns within three years of the date of enactment of the Fishery Conservation and Management Amendments of 2003, or if the Secretary fails to approve the Council's recommendation, the Secretary shall, within six years of the date of enactment of the Fishery Conservation and Management Amendments of 2003, develop and implement a fishery management plan amendment or regulations to remove such concerns.

"(e) FISHERY OBSERVER FUND.-

“(1) Establishment of Fund.- There is established on the books of the Treasury of the United States, a fund which shall be known as the Fishery Observer Fund (Fund). The Fund shall be administered by the Secretary (of Commerce). The Fund shall be available

without appropriation or fiscal year limitation, only to the Secretary for the purposes of carrying out subsection (d). The Fund shall consist of all moneys deposited into it in accordance with this section, plus interest on those moneys.

“(2) Investment of Amount.-

“(a) In general.- It shall be the duty of the Secretary of the Treasury to invest, at the direction of the Secretary of Commerce such portion of the Fund that is not currently needed for the purposes of the Observer Program.

“(b) Authorized Investments.- Such investments shall be in public debt obligations with maturities suitable to the needs of the Fund, as determined by the Secretary of Commerce. Investments in public debt obligations shall bear interest at rates determined by the Secretary of the Treasury taking into consideration the current market yield on outstanding marketable obligations of the United States of comparable maturity.

“(3) Sale of Obligation.- Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the direction of the Secretary of Commerce at market prices.

"(f) CONTRIBUTIONS.- For purposes of carrying out subsections (d) and (e), the Secretary may accept, solicit, receive, hold, administer, and use gifts, devises, contributions, and bequests. Funds collected under this subsection shall be deposited in the Fishery Observer Fund established by subsection (e).".

“(2) Section 303(b)(8) (16 U.S.C. § 1853(b)(8)) is amended by inserting ", and recommend a funding mechanism under section 403(d)(1)(A)" before "; except that such a vessel".

(b) NORTH PACIFIC RESEARCH PLAN.- Section 313 (16 U.S.C. § 1862) is amended-

- (1) by striking subsections (a), (b), (c), (d), (e), and (i);
- (2) by redesignating subsections (f), (g), and (h), as subsections (a), (b), and (c), respectively;
- (3) in subsection (a), as so redesignated, by striking "and this section"; and
- (4) in subsection (b), as so redesignated, by striking "North Pacific Fishery Observer Fund" and inserting "Fishery Observer Fund established under section 403(e)".

SEC. 24. AMENDMENTS TO NORTHERN PACIFIC HALIBUT ACT.

(a) CIVIL PENALTIES.- Section 8(a) of the Northern Pacific Halibut Act of 1982 (16 U.S.C. § 773f(a)) is amended-

- (1) by striking "\$25,000" and inserting "\$200,000";
- (2) in the fifth sentence-
 - (A) by striking "violation" and inserting "violator";
 - (B) by striking "and history" and inserting "any history"; and
 - (C) by striking "ability to pay,"; and
- (3) by adding at the end the following new sentence: "In assessing such penalty, the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay, provided that the information is served on the Secretary at least 30 days prior to an administrative hearing."

(b) PERMIT SANCTIONS.- Section 8 of the Northern Pacific Halibut Act of 1982 (16 U.S.C. § 773f) is amended by adding at the end a new subsection to read as follows: "(e)(1)In any

case in which-

“(A) a vessel has been used in the commission of any act prohibited under section 7;

“(B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this Act has acted in violation of section 7; or

“(C) any amount in settlement of a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any marine resource law enforced by the Secretary has not been paid and is overdue –

the Secretary may-

"(i) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;

"(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

"(iii) deny such permit; or

"(iv) impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person under this Act and, with respect to any foreign fishing vessel, on the approved application of the foreign nation involved and on any permit issued under that application.

"(2) In imposing a sanction under this subsection, the Secretary shall take into account-

"(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

"(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

"(3) Transfer of ownership of a vessel, a permit, or any interest in a permit, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, permit, or interest in a permit, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel, permit, or interest at the time of the transfer.

"(4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty, criminal fine, or any amount in settlement of a civil forfeiture, the Secretary shall reinstate the permit upon payment of the penalty, fine, or settlement amount and interest thereon at the prevailing rate.

"(5) No sanctions shall be imposed under this section unless there has been prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed either in conjunction with a civil penalty proceeding under this section or otherwise.

"(6) For the purposes of this section, the term 'permit' means, without limitation, any license, certificate, approval, registration, charter, membership, exemption, or other form of permission issued by the Commission or the Secretary, and includes any quota share or other transferable quota issued by the Secretary."

(c) CRIMINAL PENALTIES.- Section 9(b) of the Northern Pacific Halibut Act of 1982 (16

U.S.C. § 773g(b)) is amended-

- (1) by striking "\$50,000" and inserting "\$200,000"; and
- (2) by striking "\$100,000" and inserting "\$400,000".

SEC. 25. MAINE POCKET WATERS.

Section 808(a) of the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. § 5107a(a)) is amended by striking all after "Federal and State regulations:", and adding the following:

"(1) west of Monhegan Island in the area north of the line 43 degrees 42' 10.0"N, 69 degrees 34' 16.0"W and 43 degrees 42' 15.0"N, 69 degrees 19' 18.0"W;

(2) east of Monhegan Island in the area located north of the line 43 degrees 44' 0.0"N, 69 degrees 15' 05.0"W and 43 degrees 48' 10.0"N, 69 degrees 08' 01.0"W;

(3) southeast of Matinic Island in the area located north of the line 43 degrees 48' 10.0"N, 69 degrees 08' 01.0"W and 43 degrees 44' 08.0"N, 69 degrees 53' 01.0"W;

(4) south of Vinalhaven Island in the area located west of the line 43 degrees 52' 18.5"N, 68 degrees 40' 0.0"W, and 43 degrees 58' 10.5"N, 68 degrees 32' 57.0"W;

(5) south of Bois Bubert Island in the area located northwest of the line 44 degrees 19' 16.5"N, 67 degrees 49' 30.0" W, and 44 degrees 23' 40.0"N and 67 degrees 40' 30.0"W."

SEC. 26. WESTERN PACIFIC FISHERY DEMONSTRATION PROJECTS.

Section 111(b) of the Sustainable Fisheries Act (16 U.S.C. § 1855 note) is amended by amending

paragraph (6) to read as follows:

"(6) For purposes of this subsection, 'Western Pacific community' shall mean a community eligible to participate under section 305(i)(2)(B)(i) through (iv) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1855(i)(2)(B)(i) through (iv)).".